



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/202,305	03/22/1999	NICHOLAS MANOLIOS	06025.0003	2721

7590 03/06/2002

DAVID G PERRYMAN
NEEDLE & ROSENBERG
127 PEACHTREE STREET NE
SUITE 1200
ATLANTA, GA 303031811

EXAMINER

GUPTA, ANISH

ART UNIT PAPER NUMBER

1653

DATE MAILED: 03/06/2002

Please find below and/or attached an Office communication concerning this application or proceeding.



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

09/202,305

SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
---------------	-------------	-----------------------	---------------------

EXAMINER

ART UNIT	PAPER NUMBER
----------	--------------

22 19

Below is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

DATE MAILED:

ADVISORY ACTION

■ THE PERIOD FOR RESPONSE

- a) ■ is extended to run 3 months or continues to run ____ from the date of the final rejection.
- b) □ expires three months from the date of the final rejection or as to the mailing date of this Advisory Action, whichever is later. In no event however, will the statutory period for response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response as set forth in b) above.

- Appellant's Brief is due in accordance with 37 CFR 1.192(a).
- Applicant's response to the final rejection, filed 2-15-02, has been considered with the following effect, but is not deemed to place the case in condition for allowance.
1. □ The proposed amendments to the claim/and or specification will not be entered and the final rejection stands because:
- a. □ There is no convincing showing under 37 CFR 1.116(b) why the proposed amendment is necessary and was not earlier presented.
 - b. □ They raise new issues that would require further consideration and/or search. (See note).
 - c. □ They raise the issue of new matter (See note).
 - d. □ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
 - e. □ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: __

2. □ Newly proposed or amended claims ____ would be allowed if submitted in a separately filed amendment canceling the non-allowable claims.
3. ■ Upon the filing of an appeal, the proposed amendment □ will be entered □ will not be entered and the status of the claims will be as follows:

Claims allowed: ____

Claims objected to: 5, 7-8, 12

Claims rejected: 1, 3, 13

However;


- Applicant's response has overcome the following rejection(s):

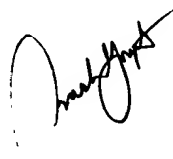
4. ■ The affidavit, exhibit or request for reconsideration has been considered, but does not overcome the rejection because Applicants have argued that the reference does not anticipate the claimed invention since the reference teach a peptide have a sequence length outside their claimed sequences length. Specifically, the peptide taught by the prior art discloses a sequence where one X variable is 5 amino acids, but the peptide corresponding to the other X variable is 9 amino acids. This is outside the claimed range since the claims are drawn to a peptide wherein the X variables are between 2 and 6 amino acids.

Applicant's arguments filed 2-15-02 have been fully considered but they are not persuasive.

Claim 1 states, with respect to the X variable, that "X is a hydrophobic amino acid or a hydrophobic peptide sequence comprising between 2 and 6 amino acids." The MPEP clearly states that comprising is open ended and does not exclude additional, unrecited elements. In the peptide art, comprising allows for additional amino acids. Given the traditional use of comprising, the claims can be interpreted as X having any length of amino acids so long as the peptide contains a hydrophobic peptide between two and 6 amino acids. The peptide of the prior art teach the sequence LLVIVELIPSTSSAV. The sequence LLVIV, as applicants have indicated, corresponds to the first X variable and E corresponds to the charged amino acid Z variable. The peptide LIPSTSSAV corresponds to the other X variable since this is a peptide comprising a hydrophobic peptide between 2 to 6 amino acids. Namely, the di-peptide LI go towards the hydrophobic limitation in the claim. Thus the reference anticipate the claimed invention.

5. ☐ The affidavit or exhibit will not be considered because applicant has not shown good and sufficient reasons why it was not earlier presented.
- ☐ The proposed drawing correction ☐ has ☐ has not been approved by the examiner.
- ☐ Other


CHRISTOPHER S. F. LOW
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600


Anish Gupta